IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.3149 of 2001
and
W.M.P.No.4358 of 2001

1.State of Tamil Nadu rep.by its
Secretary to Government
Health and Family Welfare
Department, Fort St.George,
Chennai-600 009.

2.The Director of Medical Education
Chennai-10. .. Petitioners

-Vs-

1.Dr.A.R.Chakravarthy
Professor of Obstetrics and
Gynaecology, Chengalpattu Medical
College, Chengalpattu.

2.Dr.C.T.Vela
Reader in Obstetrics and Gynaecology
Government Mohankumaramangalam
Medical College Hospital, Salem.

3.Dr.V.Madhini
Reader in Obstetrics and Gynaecology
Kilpauk Medical College
Chennai 600 010.

4.The Registrar
Tamil Nadu Administrative Tribunal
Chennai. .. Respondents

Petition under Article 226 of Constitution of India praying for the
issue of a writ of certiorari calling for the records pertaining to the order
dated 20.12.2000 made in O.A.No.4534/1995 on the file of the Hon'ble Tamil

Nadu Administrative Tribunal, Chennai and quash the same.

!For Petitioners : Mr.V.R.Rajasekaran
Special Govt.Pleader

^For Respondents :
R1 : Mr.K.Chandru, Senior Counsel
for Mr.Nissar Ahmed
RR 2 & 3 : No appearance

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

This writ petition is by the State of Tamil Nadu challenging the order of the Tamil Nadu Administrative Tribunal (hereinafter referred to as 'the tribunal'), whereby the tribunal allowed the original application filed by one Dr.A.R.Chakravarthy, claiming seniority over Dr.C.J.Vela and Dr.V.Madhini. The mainstay of Dr.Chakravarthy is that he was appointed under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules (hereinafter referred to as the 'Rules') on 1.11.1 971 as Temporary Assistant Surgeon and thereafter he was selected by the Tamil Nadu Public Service Commission on 5.3.1976 and ultimately a regular appointment order was issued on 22.12.1978 appointing him in service with effect from 1.11.1971. It seems that by the impugned order G.O.(D) No.438, Health dated 22.6.1994, which was communicated to Dr.Chakravarthy by an order dated 1.7.1994, the respondents 3 and 4 before the Tribunal were given promotion overlooking the seniority of the petitioner therein, viz., Dr.Chakravarthy.

2. He therefore filed the original application before the Tribunal. This application was opposed by the Government suggesting that the seniority of the petitioner was fixed according to the ranking given by the Public Service Commission when he was selected by the Service Commission and, therefore, Dr.Chakravarthy was placed lower than the third and fourth respondents. The tribunal has refused to accept this explanation and defence and found that identical question was considered by it in T.A.No.658 of 1989 by its judgment dated 28.2.1990, wherein the tribunal held that the seniority would reckon from the date of original appointments particularly in case of the candidates who were later on confirmed and who were granted the said seniority. The tribunal, therefore, refused to accept the defence and allowed the application. It is this order, which is in challenge before us.

3. Mr.Rajasekaran, learned counsel appearing on behalf of the government very earnestly argues that a selection under Rule 10(a)(1) does not grant any status on a government employee and his date of appointment would necessarily have to be reckoned from the date when he was regularly appointed by the Tamil Nadu Public Service Commission. The gravamen of the contention of Mr.Rajasekaran is that the third and fourth respondents before the tribunal were selected by the Tamil Nadu Public Service Commission earlier and

therefore they had to be taken as seniors as compared to Dr.Chakravarthy. The learned counsel has taken us through Rules 23(a), 35(a) and 10(a)(1)of the Tamil Nadu State and Subordinate Service Rules. The learned counsel contends further that even if the state government had appointed Dr.Chakravarthy with effect from 1.11.1971, that could be only for the purposes of fixation of pension and pay and not for the purpose of seniority.

4. As against this, the learned Senior Counsel Mr.Chandru points out that this Court in "MADALAIMUTHU -vs- STATE OF TAMIL NADU" reported in 2002 (2) M.L.J.254, has already clinched the issue. Learned Senior Counsel points out that the Government had lost in the earlier matter, where the tribunal had taken a view that the seniority would have to be reckoned from the date when the government servant was appointed. Learned Senior Counsel further argues that all that was done by Dr.Chakravarthy was to apply before the tribunal that this judgment was not being implemented in his case by the state government. Learned Senior Counsel further points out that there is a specific power under Rule 23(a) to allow a government servant appointed under 10(a)(1) to start the probation from the first date of his service even if he is appointed under Rule 10(a)(1). On that basis, the learned counsel says that the government has actually allowed Dr.Chakravarthy to be appointed with effect from 1.11.1971. In that view, the learned senior counsel says that Dr.Chakravarthy is senior to respondents 3 and 4 and the writ petition has no meaning.

5. In the first place, one wonders as to why the government had to file this writ petition particularly when it is a question of inter se seniority between its employees. Again, this is not a question involving number of employees, but the concerned employees are only one on one side and two on the other. Those two persons had also remained exparte before the

tribunal and have not bothered to appear before us at all. We fail to understand as to why the government should have taken the sides of one set of employees as against some others. But, we are not on that question solely.

6. In the aforementioned decision, the Division Bench of this Court, to which one of us was a party (V.S.SIRPURKAR, J.), has very clearly read and interpreted the scope of Rules 10(a)(1), 23(a) and 35(a). There, the question has been finalised that there lies enough discretion in the appointing authority to allow a government servant to start his probation from the first date of his service even if he is appointed with the aid of Rule 10(a)(1). Precisely that has happened here. Ultimately, if the cases against the respondents are to be compared, it is obvious that Dr.Chakravarthy was appointed on 1.11.1971, whereas both the respondents were appointed much later than that. Once the government itself had taken a position that Dr.Chakravarthy could be allowed to start his probation with effect from 1.11.1971, one fails to understand as to how the Government could turn back and say that those persons who were appointed after Dr.Chakravarthy would still be senior to him.

7. The contention that Dr.Chakravarthy was appointed with effect from

1.11.1971 only for the purpose of pay and pension has no basis as the Government Pleader could not show any document to support the same. The order dated 22.12.1978 also does not suggest that. In short, the writ petition has no merits at all and it is dismissed with exemplary costs of Rs.3,000/- (Rupees Three Thousand Only). Consequently, connected W.M.P.No.4358/2001 is also dismissed.

(V.S.S, J.) (F.M.I.K,J.)

Index : Yes
Website : Yes

kst.

To :

The Registrar
Tamil Nadu Administrative Tribunal
Chennai.